IN THE HIGH COURT OF JHARKHAND AT RANCHI

Tax Case No. 16 of 2003

Commissioner of Central Excise, Ranchi... Petitioner

Vs.

M/s Pensol Industries Ltd., Ranchi Respondent

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR JUSTICE ALOK SINGH

For the Petitioner : Mr. Ratnesh Kumar & Amit Kumar
For the Respondent : Mr. A.K. Das

------ **Dated 04th February, 2013**

Heard learned counsel for the parties.

2. The petitioner is aggrieved against the order of Customs, Excise & Service Tax Appellate Tribunal, Eastern Bench, Kolkata (CESTAT) passed in Appeal ESM-58/03 dated 27.06.2003. The CESTAT upheld the order of the Commissioner of Central Excise (Appeals), Ranchi dated 27.02.2003 and held that the assessee is not liable to pay the penalty in view of the Explanation appended under Section 117 of the Finance Act, 2000 which provides that:

> ***Explanation:*** *For removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have so punishable if this Section had not come into force.*

3. It will be worthwhile to mention here that the imposition of the service tax was challenged before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court declared the provisions of Rule 2 (d) (xii) and (xvii) of

the Service Tax Rules, 1994 as ultra virus and also directed the Revenue in the same judgment of *M/s Laghu Udyog Bharati Vs. Union of India* {1999 (112) ELT 365} to refund the tax collected. To nullify the judgment of the Hon'ble Supreme Court, Finance Act, 2000 was enacted, which revived the liability retrospectively. The validity of this enactment has also been upheld by the Hon'ble Supreme Court. As per Section 117 of the Finance Act, 2000, the person who has been refunded the tax amount, in view of the judgment in M/s Laghu Udyog Bharati (Supra) was required to refund the amount back to revenue within 30 days from the date of assent from the President of India to the Finance Act, 2000. In this Act of 2000, there is provision of payment of interest at the rate of 24 % if the payment is not made within statutory period. In the case in hand the Revenue sought to levy penalty under Section 76 and 77 of the Finance Act, 1994 equal to the amount of service tax and in this case service tax is only Rs. 12,571/- and therefore, imposed penalty of Rs. 12571/- under Section 76 and 2000/- under Section 77 of the Finance Act, 1994, a total penalty amounting to Rs. 14,571/-. The Tribunal as well as the Commissioner (Appeals), Customs and Central Excise, Ranchi, both were of the view that in view of the Explanation appended to Section 117 of the Act, the penalty could not have been levied under Section 76 and 77 of the Act of 1994.

4. We are of the considered opinion that the Finance Act, 2000 has made the complete procedure in its

Section 117. Section 117 of the Finance Act, 2000 reads as under:

> ***117.Validation of certain action taken under Service Tax Rules****:-- Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, sub-clauses (xii) and (xvii) of clause (d) of sub-rule (1) of rule 2 of the Service Tax Rules, 1994 as they stood immediately before the commencement of the Service Tax (Amendment) Rules, 1998 shall be deemed to be valid and to have always been valid as if the said sub-clauses had been in force at all material times and accordingly,__*
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> *(i)any action taken or anything done or purported to have been taken or done at any time during the period commencing on and from the 16th day of July, 1997 and ending with the day, the Finance Act, 2000 receives the assent of the President shall be deemed to be valid and always to have been valid for all purposes, as validly and effectively taken or done;*
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> *(ii)any service tax refunded in pursuance of any judgment, decree or order of any court striking down sub-clauses (xii) and (xvii) of clause (d) of sub-rule (I) of rule 2 of the Service Tax Rules, 1994 before the date on which the Finance Act, 2000 receives the assent of the President shall*

be recoverable within a period of thirty days from the date on which the Finance Act, 2000 receives the assent of the President, and in the event of non-payment of such service tax refunded within this period, in addition to the amount of service tax recoverable, interest at the rate of twenty-four per cent per annum shall be payable, from the date immediately after the expiry of the said period of thirty days, till the date of payment.

Explanation: *For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.*

There is provision of levy of interest only and there is no provision for levy of penalty.

5. In view of above reasons, we are of the considered opinion that the Commissioner (Appeals), Customs and Central Excise, Ranchi as well as the Tribunal were right in holding that penalty cannot be imposed upon the assessee. There is no merit in the Tax Case. Hence, the Tax Case is dismissed.

(Prakash Tatia, C J)

(Alok Singh, J)

Alankar/-